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No. 89-1436

Supreme Court, U.S.

FILED

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JOSEPH F. SPANOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1990

UNITED STATES OF AMERICA, PETITIONER

v.

**R. ENTERPRISES, INC.,
AND MFR COURT STREET BOOKS, INC.**

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**APPENDIX TO THE
BRIEF FOR THE UNITED STATES**

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APPENDIX

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

IN RE: GRAND JURY 87-4, JOHN DOE 1094

ORDER

This matter came before the Court on the application to quash grand jury subpoenas duces tecum, and for reasons stated from the bench, it is hereby

ORDERED that the motion to quash subpoenas is **DENIED**, and the two subpoenas for business records are merged in accordance with the Court's oral ruling.

/s/ Claude M. Hilton
CLAUDE M. HILTON
United States District Judge

Alexandria, Virginia
June 17, 1988

2a

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

GRAND JURY

IN RE: GRAND JURY 87-3, JOHN DOE 1094

ORDER

For reasons stated in open court, it is accordingly
ORDERED:

(1) that in re: Application to Quash Grand Jury Subpoena Duces Tecum to R Enterprises, Inc., Jury 87-3, John Doe 1094, the Motion to Quash is DENIED. R Enterprises, Inc., d/b/a Coast to Coast Video, Inc., SHALL COMPLY with the Subpoena Duces Tecum.

(2) that the Clerk shall forward copies of this Order to all counsel of record.

/s/ James C. Cacheris
JAMES C. CACHERIS
United States District Judge

July 8, 1988
Alexandria, Virginia

3a

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Grand Jury No. 87-4

IN RE GRAND JURY INVESTIGATION, JOHN DOE 1092
(MFR Court Street Books, Inc.)

ORDER

This matter came before the Court on MFR Court Street Books, Inc.'s (MFR or movant) motion to quash a grand jury subpoena duces tecum, served on April 26, 1988, seeking production of MFR's business records.¹ MFR is a small retail bookstore located in Brooklyn, New York, and according to the affidavit of MFR's attorney, engages in no interstate business. MFR argues that it should not be required to produce its records because there has been no showing that the records are material or relevant to the grand jury's investigation of the distribution of obscene materials into the Eastern District of Virginia. In essence, MFR argues that the grand jury is conducting a fishing expedition in the hope that it may find some evidence of illegal activity on MFR's part. MFR also argues that its First Amendment interests outweigh any need the grand jury has for its business records.

¹ The government orally modified items seven and eight of the subpoena to include only invoices generated as a result of doing business in the Eastern District of Virginia.

For the reasons stated from the bench and in this Order, the motion to quash is denied. Movant has not cited any persuasive authority indicating that the government must make a threshold showing that the business records sought are relevant to the grand jury's investigation. Nor has movant produced any convincing authority for the argument that the business records of a purveyor of sexually explicit materials should enjoy the same presumption of First Amendment protection as do the materials themselves.

Even assuming, *arguendo*, that the government must make a threshold relevance showing, it has amply done so here. The principal owner and operator of MFR is Martin Rothstein. Rothstein is also the principal of Model Magazine Distributors, Inc. (Model) and R. Enterprises, Inc., d/b/a Coast to Coast Video (R. Enterprises). Model has distributed obscene material into the Eastern District of Virginia. *United States v. Dennis E. Pryba, et al.*, Cr. 87-00208-A (E.D. Va. 1987). The three entities share the same location. According to the affidavit of FBI agent James Clemente, Rothstein, when informed that subpoenas were outstanding for all three entities, stated that, "It's all the same thing. I am the president of all three." Given Rothstein's acknowledgment of the interconnectedness of the three entities, MFR's records are relevant to the investigation into distribution of obscene materials into the Eastern District of Virginia and possible violations of the Racketeering Influenced and Corrupt Organizations Act. 18 U.S.C. §§ 1961 to 1963.

Prior proceedings relating to motions to quash by Model and R. Enterprises support the Court's denial of MFR's motion. On June 17, 1988, Judge Claude

M. Hilton of this District denied Model's motion to quash a subpoena identical to the one at issue here, and on July 8, 1988, Judge James C. Cacheris denied R. Enterprises' motion to quash another subpoena identical to the one at bar. *In re: Grand Jury 87-4, John Doe 1094* (E.D. Va. June 17, 1988) (Order); *In re: Grand Jury 87-3, John Doe 1094* (E.D. Va. July 8, 1988) (Order). Further, the subpoena in question is essentially similar to the one directed to Model in 1986 and upheld by the district court and approved by the Fourth Circuit in *In re Grand Jury Subpoena: Subpoena Duces Tecum*, 829 F.2d 1291, 1295 (1987), *modified on other grounds*, 844 F.2d 202 (1988). While counsel for MFR disputes whether the validity of the subpoena for business records was fully briefed and addressed before the Fourth Circuit, the contrary appears. That court stated that the request for such records was "clearly delineated and not overly burdensome." *Id.* In sum, this Court concludes that, like the Model and R. Enterprises subpoenas, the MFR subpoena is valid.

Copies of this Order shall be issued to all counsel of record.

/s/ T. S. Ellis, III
T. S. ELLIS, III
United States District Judge

Alexandria, Virginia
August 18, 1988

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Grand Jury Nos. 87-3, 87-4

IN RE: GRAND JURY INVESTIGATION, JOHN DOES
1092, 1094 (R. Enterprises, Inc., Model Magazine
Distributors, Inc. and MFR Court Street Books,
Inc.)

ORDER

This matter came before the Court on the government's motion for an order to show cause why Model Distributors, Inc. (Model), R. Enterprises, Inc., d/b/a Coast to Coast Video (R. Enterprises), MFR Court Street Books, Inc. (MFR) and Martin Rothstein should not be held in contempt for failure to comply with the Court's orders of June 17, 1988, July 8, 1988 and the Court's oral ruling of August 12, 1988, denying Model's, R. Enterprises' and MFR's motions to quash grand jury subpoenas duces tecum. For the reasons stated from the bench, and it appearing to the Court that movants have raised no additional or meritorious grounds for resisting the subpoenas, it is hereby ORDERED:

1) That the government's motion is granted with respect to Model, R. Enterprises and MFR Court Street Books, Inc. Model has failed to comply fully with the subpoena issued on April 22, 1988 and modified on June 2, 1988. Model has also refused to produce videotapes in response to a second subpoena

issued on June 2, 1988. R. Enterprises has resisted compliance with a subpoena issued on June 27, 1988. MFR has failed to comply with a subpoena issued on April 22, 1988. The three entities have deliberately and contumaciously disregarded the Court's orders to produce the materials requested and are in contempt of this Court. A fine of \$500 per day, dating from August 12, 1988, is imposed on each entity so long as its contemptuous conduct continues. Collection, but not accumulation, of fines is stayed until 5:00 p.m. on August 23, 1988, pending appeal of this matter. Contemnors may request an extension of this stay should the Court of Appeals be unable to hear this matter in the time permitted.

2) That, as to Martin Rothstein, the government's motion is held in abeyance pending the submission of further authorities on whether the Court has the power to order Rothstein's confinement under 28 U.S.C. § 1826. The Court will rule on the matter without further oral argument.

Copies of this Order shall be issued to all counsel of record.

/s/ T. S. Ellis, III
T. S. ELLIS, III
United States District Judge

Alexandria, Virginia
August 18, 1988